MEDICO-LEGAL CRIMES IN NINETEENTH CENTURY MELBOURNE

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I OWE you Sir, and this Society, a sincere and very real apology because a radical upheaval in my way of life in recent months has prevented me from developing this paper along the more earnest lines which I had originally planned for it. Had I less respect for this Society, I should have sought leave to appear another time, but when I hinted at this to the normally calm legal secretary it produced such a spate of *non placets, non licets* and *nil desperandums* that I realized I must stand my trial at the appointed time. If therefore my pleading is anecdotal rather than erudite, you will appreciate that it is because, to slightly misquote an eminent authority, I am a windy client to my attorney's woes.

In 1866, at a Coroner's inquest, James George Beaney, Senior Surgeon to the Melbourne Hospital, otherwise known as "Diamond Jim" or "Champagne Jimmy", was committed for trial on a charge of murder.

A young woman, Mary Lewis, was barmaid at the Terminus Hotel, St. Kilda. She had had two children previously, the father of at least one being the proprietor of the hotel, so that there was at least the "presumption of the possibility" of further pregnancy. On March 12, 1866, she consulted Beaney. She had previously consulted two other doctors. One of them, Dr. L. L. Smith, considered that she was three months pregnant. He unfortunately was precluded from using a speculum, in his view the only certain way of diagnosing pregnancy, because, as he said, he had been prosecuted for using it on a previous occasion; the woman had aborted and died and Dr. Smith had had to persuade the jury that the metal instrument which he had used was a speculum and not a curette. Up to the time when she consulted Beaney, Mary Lewis was not apparently in her normal health; there was some evidence of menstrual irregularity,

malaise and possibly vaginal discharge. Beaney examined her at his rooms in Collins Street on a Monday. On Tuesday he visited her at her lodging-house in Rokeby Street, St. Kilda, and was alone with her for about a quarter of an hour. Beaney later described signs and symptoms which, even at this stage, were suggestive of a generalized as well as a localized pelvic disorder; a speculum examination was made. On the Wednesday, when he again visited her, her condition had greatly deteriorated and she was seriously ill. Her face was cyanosed, there were sordes on her teeth, her breath was foul and her pulse was rapid. Beaney washed out the vagina with soap and water and administered chloroform, as he subsequently explained, in order to give her a little sleep. On the Thursday she was *in extremis* and she died during the afternoon. Beaney gave a certificate of death stating that she had died of "malignant disease of the uterus". He later indicated that the word "malignant" was used in the same sense as in the phrases "malignant pustule", or "malignant sore throat", that is, to imply severity rather than cancer. On Friday, Beaney received a message from the keeper of the lodging-house to say that rumours were about to the effect that Mary Lewis had died as the result of an illegal operation and to ask him to perform a post-mortem examination to clear the house's name. Beaney said he would do so, but in the end he did not perform the examination. The rumours evidently reached the ears of the Coroner, Dr. Candler, and a post-mortem examination was performed by Dr. James Rudall, later a well-known Melbourne surgeon. He was assisted by Dr. William Russ Pugh, who is remembered as having been the first person in Australia to administer ether. Beaney was informed by a policeman of the proposed examination but sent no representative to it because he was so unconcerned, or so his friends stated. Rudall and Pugh discovered that the external genitals were very swollen and dark-coloured as the result, they felt, of force. There was no distinct areola around the nipples but the breasts contained milk-like fluid, signs which may be associated with pregnancy but are not diagnostic. The uterus was enlarged to the size of a five months' pregnancy and was plum-coloured. Two ruptures were found in the uterus, one at the fundus and one near its junction with the vagina; Rudall later re-examined the organs and amended the second uterine rupture to a rupture of the upper part of the vagina. The evidence as to the state of the uterine walls themselves is conflicting and confus-

ing; they were probably soft. Rudall passed his hand from the vagina upwards and found the passage so dilated that his fingers could easily protrude through the tear in the fundus. He estimated the distance from vaginal orifice to rupture as 13 to 15 inches which, if accurate, indicates a distinctly thorough examination to say the least. There was no blood in the abdominal cavity. There was some reddish fluid in each pleural cavity. The spleen was soft. The body was subsequently exhumed but no further pertinent information obtained.

The Crown suggested that the diagnosis was pregnancy, followed by illegal abortion or miscarriage and death from rupture of the uterus. The defendants averred that Mary Lewis suffered from subinvolution of the uterus following the birth of her child a year previously, death being due to blood poisoning.

The legal interest of the Queen v. Beaney lies, firstly, in the sequence of coronial and magisterial enquiries, a trial in which the jury failed to agree, and finally a trial leading to the inviable verdict—on the evidence—of Not Guilty. Apparently the magisterial enquiry was held to allow examination of the witnesses as provided by the Statute No. 267; an application to prevent the examination of witnesses in the presence of the prisoner, after he had been committed for trial by the coroner, was refused. Beaney's supporters held the view that the coronial proceedings were illegal, possibly because Beaney was refused permission to give evidence. I have not studied these aspects fully and trust that a legal colleague may be able to clarify them for me. Secondly, there is also interest in the fact that at the first trial, the defence adopted the technique of *furor medicorum,* relying on the confusion created by a multiplicity of medicos contradicting one another on a multiplicity of relevant and irrelevant points. At the second trial, Mr. Aspinall relied on his devastating cross-examination of the Crown's medical witnesses and his address to the jury. He called no witnesses for the defence and Beaney did not give evidence.

The severity of Aspinall's cross-examination may be judged by the fact that he asked Rudall some 700 questions, or 50 pages of the printed transcript. The general trend is apparent from an analysis of the first 150. There were 34, in four separate series, on the duration of the autopsy, from which he eventually got Rudall to concede that a longer time would be needed for more thorough examination. Aspinall constantly reverted to this point, stressing that a thorough examination was surely desirable.

There were 33 on whether or not Rudall had prepared additional evidence since the first trial and arranged that it be extracted from him by the Crown Prosecutor in due form; Aspinall eventually obtained, after some denials, not merely an admission from Rudall but the relevant document from the Prosecutor himself. There were 25 questions on the visibility of the womb on opening the abdomen, with the aim of showing that the putrefying organs had to be handled before the alleged rupture became visible. No less than 27 questions dealt with the mode of passing the hand into the uterus, aiming to show that the procedure could be traumatic.

I quote two examples of the cross-examination to illustrate Aspinall's nagging persistence, which must have been intensely irritating to the witness (Rudall).

Q.—In the case of examining the belly, should you not have first examined everything *in situ*?

A.—You generally, when a body is opened, turn back the intestines, and you generally cast a glance at the parts.

Q.—You can see sufficient at a glance?

A.—I mean to say, that unless you saw some appearances to arrest your attention you would not make a long examination.

Q.—When the reputation, and perhaps the life, of a brother professional man are at stake, is a cursory glance at the belly all you take?

A.—No; it is not all. We give more than a glance. There are some things we see at a first glance as on a further examination.

Q.—If any one raised a prosecution against you, would not you require a careful examination?

A.—Yes.

Q.—Not a glance. Should you not examine everything *in situ* to begin with,and remove and examine them further afterwards?

A.—Such an examination was made.

Q.—Cursorily, you said. I don't call a glance an examination . . .

Q.—Do you think the parts could be better examined *in situ* than after removal, and that simply giving a glance was sufficient?

A.—Of course there should be a proper inspection.

Q.—Is a glance a proper inspection?
A.—It may be. I believe the examination was quite adequate.
Q.—Was it a glance?
A.—It was a look into the abdomen.
Q.—How long did that look last?
A.—I cannot say.
Q.—Was it more than that at the intestines?
A.—I don't wish to state. I cannot tax my memory.
Q.—Then having glanced at the intestines, you proceeded with your investigation elsewhere?
A.—I proceeded to make such an examination as I considered necessary.

. . . . . .

Q.—Would you in a similar case be more careful in conducting a *post-mortem*?
A.—I hope I should do so on every occasion.
Q.—Do you not think that there were some things to which you ought to have addressed yourself?
A.—There were some things to which I might have addressed myself, and which I think are overstrained.
Q.—Would you not think it your duty to make a fuller examination than you did at that time?
A.—I should make a fuller examination.
Q.—Then you feel that you did not exhaust everything, and that you have learned something from this case?
A.—Yes.
Q.—Have you not learned to make a fuller examination another time?
A.—I should be more careful in a future case.
Q.—You are confident you would?
A.—I would.
Q.—Don't you feel that because in the last case you did not do enough?
A.—I don't think I should ever do enough.
Q.—Do you not now feel that if another woman were to be examined by you, under exactly similar circumstances to those of Mary Lewis, you would make the examination more complete?
A.—I have already said that I would endeavour to do more.
Q.—Don't think it would be your duty to do more?

A.—I would think it my duty to do the most I could; I don't think I should ever do enough.

Q.—Would you not in future so conduct a *post-mortem* examination as to enable you to answer all these questions?

A.—I would endeavour to do more than I did on this occasion.

The fascinating medical problem is: what became of the ovaries? They were certainly in the body, almost certainly removed from it, and then mysteriously vanished.

Actually, there was some difference of opinion as to the value of the ovaries, as the presence or absence of a functional corpus luteum was not regarded as the vital point in the diagnosis of pregnancy which it would be today. Rudall thought that the ovarian findings were unimportant, and this was his excuse for not taking the ovaries out with the uterus, which he was most anxious to preserve. In an intensive cross-examination by Aspinall, who suggested, quite rightly, that it would in fact be easier to remove uterus and ovaries together rather than cut the connections between uterus and ovaries to extract the former on its own, Rudall's memory on what had really happened to the ovaries became almost understandably clouded. Pugh said that he drew attention to the ovaries as of prime importance, suggesting that the "delicate character" of the requisite histological study demanded Professor Halford's special skills and facilities. Therefore he was confident that they were removed, although he did not look himself for a corpus luteum, which is curious. He "failed to notice their absence" when he collected the jar containing the specimen from Rudall two or three days later. Beaney was confident he saw them the day after the autopsy, when he was allowed to view the specimen with Rudall and to take a tiny piece of uterus for microscopy. The uterus went to Halford, after its ultimate return from Pugh to Rudall, per favour of a police inspector, while the vagina, which Rudall had to cut off right through the middle of the alleged tear because he could not find a large enough jar for a conjoint uterus and vagina, was later given to Halford personally by Rudall. In any case, when Beaney's supporters were allowed to view the uterus, under Halford's observation, nearly three weeks later, the ovaries were gone, severed from their moorings by a sharp instrument, apparently (I am not sure on what grounds) *after* the removal of the uterus from the body. Each side accused

the other of taking them, the voice of the defendants being more melodramatic, if not particularly compelling:

"The question of 'Who bagged the ovaries?' will come from every medical man in the World of Messrs. RUDALL and PUGH. Have neither of these gentlement a spectre, with blackened and swollen face and skull-cap wide open, . . . sitting at his bed-head, or going arm-in-arm with him down the streets, gibing at him, and muttering into his ears 'Where are my ovaries?' Spirit seers say such a spectre does exist. The parts *were in Mr. RUDALL's charge,* and it is to him . . . that the Crown must look for them". Three weeks after the autopsy, in the cemetery, imagine the picture, or spectre shall I say, of half a dozen medicos rummaging through a coffin and a corpse, searching for two lost ovaries—a macabre entracte to the main tragedy. The search was unsuccessful, and we shall never know who took these vital organs. I regret to say it seems possible that they were stolen by one of my senior colleagues, but the curious feature is that it is not practicable to point the finger of suspicion with reasonable certainty at one side or the other. If a corpus luteum was seen macroscopically by any of the observers, then the finger points at Beaney and his associates: if one was not visible, it points at the Crown's medical witnesses; perhaps particularly at Pugh, who believed its absense would argue against pregnancy, but possibly Rudall discarded them as of little importance, wishing to avoid argument on a point which might easily be decided against him. In either case there is a malicious intent which is not evident in what is known of the rest of the careers of either surgeon, although they do appear to have been partisan in the present matter. It may be suggested that the ovaries were simply lost in the course of the distinctly irregular way in which the organs were bandied about from place to place, but the best insurance against this was surely their anatomical attachments to the uterus. Curiously enough, to digress for a moment, some of the lessons to be learnt from the procedure adopted in this case were forgotten. In 1887, Dr. Stephen J. Bourke, a well-respected practitioner, performed curettage as an emergency procedure on a woman with severe uterine haemorrhage from which she subsequently died. An autopsy was performed by Professor H. B. Allen in the presence of Bourke and others but "though the uterus was the organ in which interest centred, it was examined by Professor Allen alone at the Melbourne Hospital, and

death was recorded as due to haemorrhage from a laceration made during the illegal operation which had taken place a few days before". Dr. Bourke was fortunate that the inquest, which was proceeding most unfavourably for him, was adjourned, and in the interim definite evidence was found of an illegal abortion prior to the period of his medical attendance.

To conclude the story of Mary Lewis, we may well ask from what did she die? At the trials, much controversy revolved round whether the uterine ruptures were due to Beaney's malpractice or Rudall's maladroit manipulations. The most significant point, in retrospect, was probably the agreed absence of blood or other abnormality of the peritonial cavity, but no dogmatic assertion is possible. My guess—and there is a little evidence for it—is that, as in Bourke's case Beaney was called in to deal with the complication of an illegal operation, possibly haemorrhage or retained placental tissue. Whether he realized this, and whether or not he attempted any manual or operative interference, is entirely a matter of surmise. Certainly no other verdict than Not Guilty is possible on the evidence as seen today.

My original theme in this paper was to have been the medico-legal significance of missing organs. Whilst I have had to abandon or at least severely strain this unifying link, I must mention the outcry which arose when Professor G. B. Halford, Professor of Anatomy, Pathology and Physiology at the University, stole the brains of a hanged criminal with the laudable scientific objective of settling a controversy as to whether or not the man had been insane. When surprised in his office in the very act of dissecting the specimen by an officer of the Crown and Mr. Edward Barker, Lecturer in Surgery, and presumably told him he had committed a serious crime in misappropriating Crown property, Halford calmly told Barker not to enter his room with his hat on and somewhat unceremoniously ejected the pair of them. Halford's theft has a rough parallel in the case of Gold Commissioner John Thomas Griffin, who accompanied the two policemen forming a gold escort in Clermont (Queensland). Convicted in 1868 of murdering both policemen and stealing the gold, Griffin achieved posthumous prominence as the skull on the local doctor's desk.

Beaney, to whom we shall now return, had quite a considerable medico-legal experience. After an operation, of a type allegedly devised by Beaney, for disease of the hip joint, a

boy of fourteen died suddenly whilst still under the influence of chloroform. No blame attaches to Beaney for this, except insofar as he had flouted a rule of the Melbourne Hospital whereby consultation with other members of the honorary staff was obligatory prior to any "capital" operation (why did the more picturesque branch of my profession discard this term in favour of the prosaic "major"?). The coroner and his jury stressed this point but otherwise no criticism was offered. A few days later a leading article in the *Argus* made a vitriolic attack on Beaney, claiming that without the protection of pre-operative consultation "the patients are literally at the mercy of any gentleman with a knife in want of a morning's amusement". There followed over 20 letters to the *Argus* for and against Beaney and the circumstances of the boy's death were examined all over again. A technical enquiry was forced upon the Hospital itself, when even the resuscitative measure of pouring brandy and water down the unconscious boy's neck was approved. The only revelation at the second enquiry was that a Mr. J. Wilkins, honorary surgeon to the Melbourne Self-Supporting Infirmary for Diseases of the Chest, Throat, Eye and Ear, an elegant-sounding institution of which I am otherwise ignorant, was forced to admit that he had remarked to a neighbour, as the water was being given by the theatre porter, on Dr. Beaney's orders, that any surgeon who would act so "should have seven years". At the Coroner's court he had merely said that no greater pains could have been taken to save the boy; he had felt justified in saying this because in his view the child was already dead and the measures taken were otherwise adequate.

The more serious result of the newspaper controversy over Michael Barry's death followed the publication of a letter signed "A Practical Surgeon". This gentleman's identity was never revealed, although his account of the death of two patients operated on some time previously by Beaney led to an exhumation and an inquest. That an anonymous letter in a newspaper should produce this result seems unfair. In this case the missing organ, once the body of Robert Berth had been exhumed, was a bladder stone, but perhaps it should not be classed as missing, for it, or a cast of it, was exhibited in the window of a bookseller's shop (doubtless Bailliere's) in Collins Street.

Robert Berth died three days after operative removal of this very large stone from his bladder. The operation had been difficult and prolonged, taking an hour—Barker said in evidence

that it would be exceptional for him (Barker) to take more than three minutes. We shall not review the surgical problems posed by this case, although they are obviously pertinent. Rudall, now a wiser man apparently, declined to do the autopsy on Robert Berth, which, although the man had been dead for over a fortnight, was carried out as an emergency procedure on Christmas Day. Dr. James Edward Neild and Mr. Edward Barker did the *post-mortem.* Neild and Beaney were not friendly, and Barker, although not a witness, had been retained to assist the Crown Prosecutor in the case of Mary Lewis, where he had publicly demonstrated a partisan approach by mouthing, sometimes audibly, the answers Crown witnesses were to give. The Coroner, Dr. Youl, at least admitted that he had difficulty in getting an unprejudiced person for this unenviable task. Mr. Purves (for Beaney) commented on this "singular fact".

> "Gentlemen, it is a singular fact that, in introducing the subject of the inquest to you, the Coroner was obliged to state that he was desirous and anxious to have the *post mortem* examination of the body of the deceased performed by impartial people. Whom did he succeed in getting to make the *post mortem* examination? Dr. Barker, a rival of Dr. Beaney—a gentleman, who no doubt, would view an operation performed by his rival with suspicion, and who would be apt to judge harshly of any mistake made by Dr. Beaney, forgetting that he, perhaps, may have made mistakes in his time. Dr. Barker is one of the persons who made the *post mortem* examination, and who is the other? Dr. Neild—a literary and dramatic critic, a gentleman without any practice in his own profession, but with a knowledge of surgery which he refused to demonstrate to you in answer to the questions I put to him, and who exhibited a temper which certainly was at variance with all my preconceived notions of what an impartial witness should be."

Purves' cross-examination of Neild was a triangular affair, with the Coroner repeatedly interrupting to support Neild's refusal to answer any question which he deemed to be surgical rather than pathological in scope, particularly after Purves elicited the information that he did not know what type of operation had been performed to extract the stone. Neild said this was because the parts were too damaged for him to tell,

but Purves aimed to show that Neild was generally poorly informed on urological surgery. Dr. Neild protested:

"Mr. Coroner, I think it is highly irregular to cross-examine me on questions of surgery. Dr. Barker, who acted with me in making the *post mortem* examination, is here, and he will give special information as to the surgical particulars of the case. Therefore, with great respect, I object to this line of cross-examination.

The Coroner—I will ask you, Mr. Purves, only to examine Dr. Neild on the subject with which he is familiar.

Mr. Purves—I submit that my cross-examination is perfectly fair. No man can presume to give evidence as to the real cause of death unless he has fully considered all the surrounding circumstances of the operation itself. Therefore I wish to test Dr. Neild's knowledge of the actual operation performed.

Dr. Neild—I shall certainly protest against answering any such questions, and shall refuse to answer them.

Mr. Purves—I certainly think you are going out of the track of your functions in refusing to answer the questions I desire to put to you. These gentlemen, the jury, have to determine the cause of death in this case, and you refuse to give evidence which will assist them to do so.

Dr. Neild—I refuse to answer any questions which don't relate to the particular duty I was entrusted to perform.

Mr. Purves—May I ask you who made you a judge of what particular questions you should answer?

Dr. Neild—I am not a judge, I am a witness. I know what my duties are quite as well as you know yours.

But Purves repeatedly got back to surgery:

Mr. Purves—You say the length of the wound was $3\frac{7}{8}$ inches. What is the proper length of a wound in the median operation?

Dr. Neild—I am not going to answer any questions on surgery, not because I don't know, but because I think you are travelling out of the record when you ask such questions. I am not here to describe the operation, nor to say whether it was performed rightly or wrongly. That is not within the scope of my particular function.

Mr. Purves—Is it within the scope of your particular function to furnish reports to the newspapers?

Dr. Neild—I decline to answer that question. You have no right to ask it.

Mr. Purves—In that deposition you say, "Its length was $3\frac{7}{8}$ inches, and its greatest breadth $1\frac{3}{4}$ inches". Was that the external orifice of the wound?

Dr. Neild—I will not give you an answer unless you ask me a question which I consider myself bound to reply to. It is no use your bullying me, though you may bully other people.

Purves made at least one doctor faint in the witness box and that in a mere civil case about a will. His personality, commanding presence and barbed wit admirably suited him for advocacy. His cross-examinations were ruthless in the extreme, and are said to have led to an Act of Parliament limiting the barrister's powers of cross-examination; they certainly led to his being knocked down in Collins Street by an outraged gynaecologist.

So frequent were Neild's refusals—"I know a great many things but I am not going to state them here"—and the Coroner's insistence on restricting the cross-examination, that at one stage Purves said "Well, I am tongue-tied", but this legal catastrophe was very short lived. The Coroner observed that he was willing to allow Mr. Purves "every latitude but it must be within certain bounds", a profound ruling which indicates that there are medical men with a true legal appreciation of verbal finesse. He added that "It is of no use to ask the witness questions upon a matter which he knows nothing about". Purves immediately said that if Dr. Neild conceded this he would be perfectly satisfied. "That is what he said", observed the Coroner. "I beg your pardon" said Neild, who went on to remark that in fact he did know but he refused to divulge the information. Mr. Purves, with shrewd exasperation, then enquired whether it came within his scope to give an opinion as to the cause of death? Neild agreed, so Purves asked how many possible causes of death there were after lithotomy and what they were? Surely it did not impress the special jury, as it does not impress me, that Neild should be allowed to refuse to answer on the grounds that this was a question of surgery and not pathology.

In his opening deposition, Neild stated that he believed the cause of death to have been "shock from injuries received during an operation, with consequent inflammation of the bladder, ureters and kidneys, and peritonitis". Purves succeeded in dis-

covering that Neild had never seen the stone which was extracted, but the last word lay with Neild who commented in reply to Purves' final question, on the peritoneum, that "it will be next week before the inquest is over if you go on at this rate".

Mr. Purves called no witnesses and presented a most masterly analysis of the surgical problems, quite apart from his analysis of a host of other factors in the case. He commented bitterly on the anonymous letter which led up to the exhumation, and he attacked the failure of a penurious Government which instigated proceedings to provide legal aid for the Coroner, who was left to perform the dual task of Prosecutor and Coroner on his own.

As I have dealt at some length with legal cross-examination, it is perhaps only fair to give an example of what I might call a medical one. In 1852, there was a civil case "for want of skill and diligence" on the part of Mr. Alexander Hunter, a former surgeon of Edinburgh, in the management of a lady with an injured foot which was eventually amputated.

When Mr. D. J. Thomas, a prominent Melbourne personality and the first doctor to use ether anaesthesia in the Colony, was examined, his replies to the questions of Mr. Hunter, who conducted his own defence, read as follows (quoted from the *Argus,* November 13, 1852, slightly modified):

> *Cross-examined by Dr. Hunter*—My name is Mr. Thomas not Dr. Thomas, came here 14 years ago, I was then 23 years of age. I served my apprenticeship in an hospital in Wales, and a very good one it was; I never dissected lubras here; I think I can be a better surgeon here by studying the human body, than if I remained at home and lead Chartists. I learned enough at home, not to cut into the knee joint as you did on one occassion. Learned to use Chloroform here. I never injured anyone by having used Chloroform; I learned enough at all events to instruct you when you failed in Chloroform at your own house, and were dancing about the room like a Charlatan . . .
>
> I don't know Syme.[1]
>
> *Dr. Hunter*—He's a Colossus, Sir—a Colossus. Syme I worship, Sir—he's a small man.[2]
>
> *Dr. Thomas*—Small, Sir, but plucky. He kicked you out of the Royal Infirmary.

[1] Sir James Syme was Edinburgh's leading surgeon at the time and he had an international reputation.

[2] Thomas was also a small man.

Dr. Hunter—Right again, Sir, right again, (and with a low bow) . . . You don't think me then a sound doctor.

Witness—'Pon my soul Sir, I don't think you are sound, whatever you may be as a Doctor.

Dr. Hunter—I don't think you a bad man Sir, not a bad man Sir.

Witness—I am much obliged to you.

Dr. Hunter—Now Sir, my (legal) adviser thinks I ought to sit down, nevertheless though I may be injuring my cause.

Witness—No doubt of that, Doctor.

Dr. Hunter then proceeded again to examine the Doctor in the box, occasionally giving a short lecture on the parts he questioned on, and alternating his questions on the merits of the case with those of scientific subjects.

Examination recontinued—My firm belief, as a man of honour is that you (Hunter) cut through that woman's foot in order to gain you a reputation by making it necessary to cut off her leg; No, I did not treat your sanctified friend, Dr. Wilkie, with great civility as I have a very contemptible opinion of him, since he once told me you were a great blackguard and a bad man, and now he is trying to make it up with you, instead of shooting you, as he ought to have done had he the spirit of a mouse.

Merely to justify the inclusion of this case on the grounds of the missing organ, I quote the finale to this theatrical performance:

The examination was continued at a great length, and concluded by Dr. Hunter saying—Now Mr. Thomas, if you wish to be friendly to yourself, Sir, you will give a chance to Surgeon Hunter, or Chartist Hunter, you will have Sir, the greatness, and the nobility, and the magnanimity, to produce the foot Sir, the foot Sir, the foot.

Dr. Thomas assured the bench that the bones of the foot were so crushed with the pincers used in the examination of them by the surgeons who attended the operation, that though he was very desirous of keeping the foot, the opinion of the profession was that it was useless to retain it.

Unilateral action by Dr. Thomas's section of the profession had again led to the destruction of what could have been an important exhibit.

To gossip a little of these tough days, it came out in evidence that when Mr. Hunter first saw this patient he exclaimed: "What scoundrel of a doctor has been attending you?" Shortly afterwards, Mr. Barker, called to see an erstwhile patient of Mr. Hunter's, is said to have asked "Who has been murdering this poor woman?"—Self-confidence has always been a desirable quality in a surgeon but nineteenth century surgeons in Melbourne possessed it in abundance.

On the question of injudicious speech, in 1879 there was a case of considerable significance in relation to the peace of mind of practising surgeons, partly because of financial implications, and partly because if Rudall had been Beaney, the case might have arisen in a Criminal rather than a Civil Court. J. T. Rudall, by this time a leading member of the surgical fraternity in Melbourne, sued for his full fee of no less than six guineas for performing an operation upon a patient with an abdominal hydatid cyst, who, it transpired, also had an inoperable cancer. The defendant claimed that the fee was unjustifiable, as no additional beneficial procedure was possible at operation; furthermore, other surgeons had deemed any surgical intervention inadvisable. The defendant's medical witnesses were T. M. Girdlestone, the man who introduced kangaroo tendon to the world as a suture material, and Dr. A. C. Brownless, sometime Chancellor of Melbourne University.

Rudall, in a subsequent letter to the Medical Society of Victoria, embodying a charge of unprofessional conduct against Girdlestone, summarises the case adequately:

> "Mr. A. Gilchrist had symptoms which were suggestive of, and were referred by his then medical attendant to, rupture of a hydatid cyst in the belly. Afterwards a tumour appeared and was repeatedly punctured. After one of these tappings a red rash came out on the skin. Lastly, as if to clinch the proof an ecchinococcus hooklet was discovered.
>
> I was aware that several medical practitioners, with whom no opportunity of a consultation was afforded to me, believed the disease to be cancer, and at my last visit I was led to think it possible that cancer might be present.
>
> There then was a patient dying from the pressure effects of an abdominal tumour, with proof of hydatids and possibility of cancer. If thorough exploration exposed hydatids, by enlarging the wound and removing them there might

be a chance of the patient living, but if it proved the disease to be cancer, the worst consequence of the operation would be some shortening of an already necessarily very short existence.[1]

Could anyone be justified in asserting (without seeing the patient) as Mr. Girdlestone has done, under the supposed security of the post mortem examination, that there was no possibility of good from the operation, that it was unnecessary and improper and that I had no right to my fees?"

Rudall won the lawsuit and his victory in this case constituted an important decision, in that it implied acceptance of the principle that the usual fee was recoverable for an operation which proved to be merely exploratory, or, indeed, even frankly unsuccessful. We need not follow the bitter arguments within the Medical Society of Victoria which had to adjudicate on Rudall's charge of unprofessional conduct, except to note that the dissension thus created was one of the precipitating factors in the formation of a branch of the British Medical Association in Melbourne. It is also of interest that there was such lack of unanimity in the profession on a question so closely involving their financial security, but I fear that on this occasion the predominant influence was personalities rather than pockets. Girdlestone and Rudall spent their surgical lifetimes more or less on opposite sides of any available fence.

As having some bearing on the problems which confront medical men in the witness box, it is worth noting that a similar charge brought by Rudall against Brownless before the Medical Defence Association was accepted as proven, but the effect of this decision was considerably reduced by a qualification urging medical men to be circumspect in giving evidence where the competence of professional brethren was in question. This was promptly interpreted, or misinterpreted, notably by the lay Press, as an attempt on the part of the profession to avoid public exposure of mistakes and malpractice and to dictate to the courts what evidence they should hear. Brownless immediately resigned from the Association in protest against this ambiguous and equivocating decision.

Probably one of the most well-remembered trials involving bodies with considerable parts of them missing was the Shark

[1] The reasoning is surgically perfectly sound.

Arm case in 1935. The arm was disgorged by a shark in Coogee aquarium a week after its capture. The arm was identified, on the basis of fingerprints and tattoo marks, as belonging to a James Smith. Smith's former employer, Holmes, gave the police some information which led to the detention of Patrick Brady on an irrelevant charge: Brady was later charged with, and acquitted of, Smith's murder. In the meantime, Holmes, the Crown's vital witness, was fired at and wounded, and finally, on the eve of the inquest, he was successfully murdered. In due course, two men were acquitted of his murder. The inquest on Smith came to a halt when the Supreme Court agreed with Brady's Counsel that an arm was not a body, in the meaning of a thirteenth century statute, and that therefore the coroner had no right to hold an inquest. I have not read this case in detail since I devoured the daily papers as a youngster, and possibly it may be of general interest if someone enlightened me further on this matter during the discussion.

In some instances, not only is the body missing, but it even has no name. About 1871, a certain Dr. J. P. Murray,[1] of St. Kilda, bought the brig *Carl* and set out on a particularly brutal and callous blackbirding expedition in the South Seas. Between 20 and 30 captured natives were wounded when indiscriminately fired on whilst incarcerated in the hold: on Murray's orders many were flung into the sea to drown. Subsequently, Murray, the unquestioned leader, turned informer. He was never prosecuted, nor even called on to give evidence. Two accomplices were tried in Sydney and hanged. Two others, by some strange quirk of reasoning on the part of the jury, were convicted in Melbourne of manslaughter. They were sentenced to 15 years' hard labour, but were immediately released on the grounds that only the British Secretary of State could determine the place of imprisonment of those convicted of homicide on the high seas. This view was confirmed by the Full Court although ultimately rejected—too late—by the Privy Council. To such quaint inconsistencies of justice may we be led by the vagaries of legal technicalities.

On occasions an entire body may be missing, either for obvious reasons, as when it is thrown into the sea, or for reasons of efficient disposal; cases of the latter type are invariably of

1 The same Dr. Murray who, as medical officer to Howitt's Burke and Wills Relief Expedition, was unable to recognize his own horse until he tied a piece of string to its mane (*Vict. Hist Mag.*, 1913, 3: 19).

morbid interest. The case of Margaret Davies illustrates how the presence of a body may be inferred. She was five months pregnant when, as Mrs. Nelson, she entered a private women's hospital in East Melbourne run by Dr. Samuel Peacock, a 72 year old practitioner, on August 10, 1911. Her young male friend, who rejoiced in the name of Clifford Poke, but posed as Mr. Nelson, saw her there several times, apparently well, till August 15, when she suffered, so it was said, a fall on the way to the lavatory and suffered minor abrasions. Dr. Peacock told him on August 17 that she had puerperal fever. By August 21 her condition had become very grave and she died on August 22. By this time Peacock knew that Davies was not married. Poke later alleged that Peacock said that he could dispose of the body and burn the clothes on his Carrum property, given a little time. Peacock suddenly sent his servants on holiday on the same day. On Poke's information Peacock was later arrested and pending his trial a most exhaustive search was made for the body. The house was almost pulled to pieces—when bail was sought, the Judge referred to the necessity of making some rooms available for the prisoner to carry on his practice—and his several outer suburban blocks of land were thoroughly dug over. All was to no avail except for the discovery of some cheap jewellery and some burnt unidentifiable remains of female clothing at Carrum. This point proved important because, on review by a higher court of Peacock's conviction of murder, the question of the weight to be given to Poke's evidence, as an accomplice of Peacock, was examined minutely. The consensus of opinion was that Poke's evidence as to the conversation about burning the body was corroborated by the finding of these remnants. Hence the conviction did not rest on the uncorroborated evidence of an accomplice and there was therefore no obligation on the trial judge to direct the jury's attention to the undesirability of accepting such evidence. Only a little attention was paid to the definition of an accomplice, a point which is obviously pertinent.

The pieces of jewellery were found in Peacok's possession and positively identified as belonging to Davies. Peacock initially denied that they were hers but later said that she had given them to him as part of his fee. Whatever the reason, the ring, bracelet and brooch were all that remained of Margaret Davies when the doctor finally was acquitted after three trials and two appeals. Some interest attaches to the first trial at which

Peacock was convicted of murder, in that the prisoner made an unsworn statement from the dock. It was in relation to some ambiguity in the presiding Judge's directions to the jury as to the weight to be accorded this in relation to other sworn evidence that a retrail was ordered. The High Court also gave consideration to the prime problem as to whether there was sufficient evidence to warrant the conclusion that Margaret Davies was in fact dead, but there was little doubt in Their Honours' minds on this point.

The Australian Encyclopaedia implies that the appeal succeeded because the Crown had failed to produce material evidence of a murder, but I do not think this is quite accurate, although it was one of the grounds of appeal. The jury failed to agree at a second trial and at the third Peacock was acquitted.

A notable feature is the absence of financial motive for an elderly and reasonably affluent practitioner to attempt the risky task of producing a miscarriage in a woman well-advanced in pregnancy. The old gentleman lived to the age of 94, so there may well be someone in this gathering who knows more of this case.

As a sidelight, the proprietors of the *Age,* the *Herald* and the *Argus* were all adjudged guilty of contempt of the Supreme Court in relation to material published after Peacock's arrest and prior to his committal for trial by that Court. The *Age* and the *Herald* published comment more or less with the clear innuendo that Peacock had murdered Davies. The *Argus* was much more circumspect, but suffered for publishing the following statement:

> " . . . . . detectives have ascertained from professional sources (unspecified unfortunately) that within 48 hours at the outside a body could be disintegrated by being cut up, boiled and submitted to the action of caustic soda or other chemical, and that the liquefied remains could be cast into the sewer, leaving no trace of the operation."

This remained the Crown hypothesis relating to the disposal of Margaret Davies.

A case of some forensic interest, in spite of its sordid nature, was described in the *Australian Medical Journal* for 1863 under the title "Murder or Suicide: which was it?" by Dr. J. Burn Malcolm. The missing organ in this case was simply blood.

One morning Dr. Malcolm was called to see the dying wife

of a goldfields storekeeper. She had been put to bed the night before drunk. The room was in confusion. The body lay on its back partly undressed; the chemise and flannel drawers she was wearing were soaked in blood, as were the sheet, blanket and bed up to her armpits. Her gown and petticoats, which had been taken off, and other objects in the room, were also bloodstained. In spite of this bloody confusion, her hands and arms were unstained with blood; there was no trace of blood under the nails, under the rings she wore or in the flexures of the fingers. At autopsy, the cranial and thoracic viscera were normal. The abdomen superficially seemed normal but closer examination revealed two entire candles in the peritoneal cavity. The uterus and vagina were normal, except for a minor vaginal laceration which did not communicate with the peritoneal cavity. The lowest two inches of the rectum were "literally beaten into a pulp". At the rectosigmoid junction, some inches higher up, was a two-inch perforation, through which the candles had proceeded. The higher of the two candles lay under and behind the stomach and transverse colon; it was broken into three pieces but was held together by the wick. The other candle, broken in two, lay at a lower level in the coils of the small intestine, but no part of it was closer than an inch to the entry perforation.

As one doctor at the inquest thought it possible that the damage could have been self-inflicted, an open verdict was returned. The Editor of the *Australian Medical Journal* was Dr. J. E. Neild, later lecturer in forensic medicine at the University, whom we have already met. He concurred, in a subjoined paragraph, with Dr. Malcolm's view that the facts indicated murder. However, he must have asked Dr. Malcolm some rather naive questions before reaching this conclusion, because also published is a letter from Malcolm, replying to "your note". Malcolm points out in very plain but faintly sarcastic terms why a candle was used ("the 'candle dodge' is . . . a real 'old lag trick' ", for purposes of masturbation, murder and suicide). As to the suggestion that the injuries might have been the result of a "brutal jest", Malcolm scornfully enquires where brutal jests end and murders begin; he had known the notorious Dr. Palmer, "who was fond of 'jesting' yet the vulgar people called his eccentricities murder." To show that he had either done some research on the subject or was in fact in touch with the realities of life in the lower classes, Dr. Neild inserted a pedantic footnote: "The candle is also used, so we have been informed,

as a sort of bougie, in order to facilitate the operation of sodomy". It is at least certain that Neild did not insert the footnote as a "brutal jest" or humorous thrust at his surgical colleagues.

I have added a final case because of interest arising from a recent television serial. The only missing factor I can use to justify its inclusion is the diagnosis, and unfortunately this eludes me today, though at least I should recognise the victim as ill. The serial dealt with the battle between William Charles Wentworth, acknowledged son of the former Principal Surgeon (himself fortunate to escape conviction in London of highway robbery), and Governor Darling. It may therefore be of interest to review briefly the circumstances of the death of Private Joseph Sudds in 1826, which was used by Wentworth to embarrass Darling. Sudds and his friend Thompson deliberately robbed a shop to obtain their discharge from the army at the cost of transportation to Norfolk Island for seven years. This was not the first occasion that this technique of escaping military service had been adopted, and consequently Governor Darling determined to alter the court's punishment. He replaced it by a direction that the pair should work on the roads in chains for the period of sentence, after which they were to rejoin their corps. The sentence began with a fantastic ceremonial parade at which the prisoners were drummed out of the Regiment: their uniforms were removed and replaced by convict garb, to which were added spiked iron collars, from which chains extended to the irons and weights attached to the feet. Five days later Sudds died. It transpired that Sudds had been under medical treatment for dropsy during his detention both before and after the trial, and that he was taken from the hospital to the ceremonial degredation. It is obvious that Surgeon McIntyre underestimated the significance and severity of Sudds' symptoms, observing at one stage that he "did not think there was anything the matter with him"; this seems an unjustifiable mistake even in the light of contemporary medical knowledge. The cause of Sudds' dropsy has never been established, in spite of a somewhat uninformative autopsy which was performed by the surgeon who had "treated" him. To what extent the irons, admittedly of a unique pattern if not of unprecedented dimensions, contributed to Sudds' demise will never be known. Wentworth went so far as to accuse Darling of murder, but in Darling's defence it has been noted that he was not aware of Sudds' serious illness. Whilst the medical interest lies in the diagnostic uncertainty,

the legal interest lies in part in whether Darling was justified in "commuting" the sentence to one which was considerably more severe. Lord Goderich, Secretary of State for Colonies, exonerated Darling in principle, but doubted the legality of his "commuting" the sentence of the Court in this manner, and in 1827 he ordered that Thompson be discharged from the rest of his punishment.

It is not altogether by chance that I have dealt at some length with cross-examinations and coronial inquiries. I have done so in a more or less anecdotal fashion, without any attempt at wholly serious analysis, but nonetheless, I would be failing in my duty as the speaker before this Society if I did not believe that they could and should be read in their historical context, which includes the present. I have illustrated problems which in principle are still with us; I believe it to be true that the rules of evidence and the legitimate role of question and answer have been laid down on the basis of a vast historical experience of common law as it affected the ubiquitous common man in his common workaday life: partly on the basis of the illustrations I have given, I take leave to doubt that the historical evolution of these rules and traditional procedures was never designed to fit them for the tasks which they are sometimes confronted with in solving scientific and technological problems. In these special problems, and I am concerned only with these, cross-examination certainly brings us nearer to the truth in many cases, but in others we can sometimes see it recede as we observe cross-examination produce a state where ignorance, provided it is profound enough, is bliss, and 'tis folly to be wise. "He that knows not and knows not that he knows not" all too often appears as a good witness because his interrogators and audience know not either. When a bridge breaks, modern society demands a Royal Commission, an enquiry with wide terms of reference and comparatively few holds barred in its approach, and it demands that it should be represented by experts from practical and academic spheres, presided over by an experienced legal technician and philosopher. When a man dies, or gets sick at work, only the legal expert remains, aided perhaps by twelve men, endowed, more or less *ipso facto*, with goodness and with trueness. (Incidentally, is the legal definition of a "true" man based on psychological, geometric or endocrinological properties?) Is it any paradox that there should be one law for the bridge and another for the man, even when we are

concerned simply with their technical specifications and the scientific basis for their structural and functional failings?

Mr. Chairman, I would not have it remembered of me, as I hastily depart for the city where the Bridge still stands, that I came among you as an iconoclastic Paracelsian, casting to the flames all the weighty wisdom and tomes of antiquity, including the more profound deliberations of this Society on these very problems. Such historical interests and perspective as I have make me as averse to change as they make me conscious of its inevitability. More important and much more entertaining, I find them provocative of thought, and I hope you, Sir, will find them provocative of discussion.

I daresay there are by now both doctors and lawyers in my audience who regard me as Sir Frank Duffy regarded the late Mr. Justice Higginbotham:

> His firm tones fell like strokes on silver pure,
> Tones to my weary ear familiar long
> In laboured judgements lucidly obscure,
> Perspicuously wrong.

References and Acknowledgements

I have dealt with some aspects of the legal proceedings in which Beaney and Rudall were involved in previous papers (*Med. J. Australia,* 1952, 1: 291; 1953, 1: 614; 1954, 2: 989). Further material is listed in *A Bibliography of James George Beaney,* M.D., E.R.C.S.E., by Edward Ford (School of Tropical Health and Public Medicine, University of Sydney, 1953), much of which I have also consulted. For another view of the case of Mary Lewis and for a medical assessment of Sudd's case, I am indebted to papers by Dr. C. Craig (*Med. J. Australia,* 1950, 1: 593 and 1945, 1: 110). I have quoted from a brief account of the inquest concerning Dr. Bourke given in Dr. Colin MacDonald's typescript collection of biographical data relating to the staff of the Women's Hospital. For the events related to the voyage of the *Carl,* I have relied upon P. A. Jacobs, *Famous Australian Trials* (1943). Reference has also been made in many instances to contemporary newspaper accounts and conventional legal sources. In fact, there is so much fundamental material available that I do not profess to have encompassed it all, and I do not feel that the present paper should be regarded as a final analysis. Indeed, I have tended to avoid pronouncing any judgements, particularly on questions of technical competence, partly for this reason, and partly because it would require a more technical and critical approach, as well as a thorough examination of the contemporary medical scene in Melbourne. To make the customary legal distinction, I may have determined some issues, but in a retrospective survey one is more interested, if possible, in seeking the truth! Finally, I am indebted to Professor David Derham for his expert guidance.